IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 3713 of 2007()

AGAINST THE ORDER DATED 27/11/2007 IN CMP.4838/2007 IN CMP.4359/2007 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA

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PETITIONER:

VIJI,
D/O.MATHEW, AGED 24 YEARS,
THOTTATHIL, ASRAMAM WARD,
ALAPPUZHA,
NOW RESIDING AT PANAMBUKATTU MEPARAMBU VEEDU,
VALLARPADAM.P.O, MULAVUKADU VILLAGE,
KANAYANNUR TALUK, ERNAKULAM.

BY ADV. SRI.G.PRIYADARSAN THAMPI
SRI.K.A.RIYAS

RESPONDENTS: ACCUSED & STATE

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1. BINJU, S/O.GEORGE,
AGED 29 YEARS, KURUPASSERY,
NEAR TO KARUKAPPALLY JUNCTION,
POTTAKKUZHY, KALOOR, ERNAKULAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR ,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3713 of 2007

Dated this the 12th day of December, 2007

O R D E R

The petitioner has initiated proceeding under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the `D.V Act') before the Chief Judicial Magistrate, Alappuzha. The matter is pending before that court. I am informed that the matter has reached the stage of evidence. The evidence has not started. The learned C.J.M has directed that the parties be referred for counseling. There is no counselor for that court. As a result of this, the matter is dragging on. The petitioner filed an application for a direction to restrain the respondent/husband from receiving an amount of Rs.1,50,000/- from the landlord of a building. That application was dismissed as per Annexure-A4. It is, in these circumstances, that the petitioner, a woman, has come to this Court with this petition under Section 482 Cr.P.C.

2. What is the prayer ? The learned counsel for the petitioner in the course of discussions at the Bar fairly accepts

that Annexure-A4 order is liable to be challenged before the Sessions Court under Section 29 of the D.V Act. As the said remedy is available to the petitioner, I find no reason why the powers under Section 482 Cr.P.C can or ought to be invoked in favour of the petitioner. The petitioner must seek relief against Annexure-A4 order by preferring an appropriate appeal under Section 29 of the D.V Act.

3. The next grievance of the petitioner is that the learned Magistrate instead of referring the parties for counseling must have referred the parties to the Lok Adalat. There are no counselors whereas there is a Lok Adalat readily available in place. The learned Magistrate must have referred the parties to the Lok Adalat. The matter is now being adjourned unnecessarily only to facilitate counseling.

4. It is for the petitioner to make a specific request in accordance with the provisions of the Legal Services Authority Act to make a reference to the Adalat. The learned Magistrate must consider such request and pass appropriate ordesr. In the facts and circumstances of this case, unless there be any other

compelling reason which has not been brought to my notice, I do certainly feel that if counseling is not possible immediately, reference to the Lok Adalat can be made. However, it is for the learned Magistrate to consider the petitioner's request and pass appropriate orders. I am, in these circumstances, satisfied that this Crl.M.C need only be dismissed with the above observations.

5. This Crl.M.C is accordingly dismissed with the above observations.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-